



MAY 19 2004

This is in response to your request for an opinion on certain timekeeping policies of your employer. You state that the timekeeping requirements are the same for both exempt and nonexempt employees, and you do not think that your employer is allowed to apply these requirements to individuals, like yourself, who are exempt from the overtime pay requirements of the Fair Labor Standards Act (FLSA).

The following is a summary of the timekeeping policies to which you object:

- 1) Exempt employees must clock in on their computers when they arrive and must clock in and out when they leave during the day except for morning and afternoon 15-minute breaks.
- 2) Exempt employees are required to keep an accurate timesheet which shows how much time they work each day.
- 3) Exempt employees' timesheets must match the computer time log or they must explain the discrepancy.
- 4) The computer log must be specific: for example, if an exempt employee is going to be absent, he or she must say whether the time will be taken as compensatory, holiday, or sick time.
- 5) Exempt employees must provide the administration with a daily schedule of the hours they will work

The following response is based on the understanding that "exempt" employees as used in your letter refer to so called "white collar" employees exempt from FLSA minimum wage and overtime requirements pursuant to Section 13(a)(1) of the FLSA.

The minimum FLSA recordkeeping requirements for such employees are found in regulations 29 CFR 516.3, enclosed. These regulations do not limit an employer's ability to track working time. Consequently, it is not a violation of the FLSA or its implementing regulations for your employer to track your working time, even if you are an exempt employee. See, e.g., Douglas v. Argo-Tech Corp., 113 F. 3d 67 (6th Cir. 1997).

Similarly, section 778.217(b)(3) allows the exclusion from the regular rate of payments that an employer makes as reimbursement of over-the-road expenses incurred when an employee travels on his or her employer's business. You state that this is the case for your client's employees. In this situation the regulation allows an exclusion from the regular rate for transportation, travel expenses and "*living expenses away from home*" [italics added]. Certainly the phrase "living expenses" includes the cost of food, and the necessity of eating meals away from home is an additional expense that the employee incurs for the employer's benefit. Thus, your client may properly reimburse employees for the cost of their meals while traveling for work, and exclude this payment from the employee's regular rate of pay.

Please note that section 778.217(c) cautions that any payments to an employee which are disproportionately large or which are not reasonably approximate to the employee's expense *will* be included in the employee's regular rate of pay.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust the above information is responsive to your inquiry.

Sincerely,



Tammey D. McCutchen
Administrator

Enclosure